

SEC REGULATORY ACCOUNTABILITY ACT

APRIL 25, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BACHUS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2308]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2308) to improve the consideration by the Securities and Exchange Commission of the costs and benefits of its regulations and orders, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “SEC Regulatory Accountability Act”.

SEC. 2. CONSIDERATION BY THE SECURITIES AND EXCHANGE COMMISSION OF THE COSTS AND BENEFITS OF ITS REGULATIONS AND CERTAIN OTHER AGENCY ACTIONS.

Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by adding at the end the following:

“(e) CONSIDERATION OF COSTS AND BENEFITS.—

“(1) IN GENERAL.—Before issuing a regulation under the securities laws, as defined in section 3(a), the Commission shall—

“(A) clearly identify the nature and source of the problem that the proposed regulation is designed to address, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted;

“(B) utilize the Chief Economist to assess the costs and benefits, both qualitative and quantitative, of the intended regulation and propose or adopt a regulation only on a reasoned determination that the benefits of the intended regulation justify the costs of the regulation;

“(C) identify and assess available alternatives to the regulation that were considered, including modification of an existing regulation, together with an explanation of why the regulation meets the regulatory objectives more effectively than the alternatives; and

“(D) ensure that any regulation is accessible, consistent, written in plain language, and easy to understand and shall measure, and seek to improve, the actual results of regulatory requirements.

“(2) CONSIDERATIONS AND ACTIONS.—

“(A) REQUIRED ACTIONS.—In deciding whether and how to regulate, the Commission shall assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating, and choose the approach that maximizes net benefits. Specifically, the Commission shall—

“(i) consistent with the requirements of section 3(f) (15 U.S.C. 78c(f)), section 2(b) of the Securities Act of 1933 (15 U.S.C. 77b(b)), section 202(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(c)), and section 2(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(c)), consider whether the rulemaking will promote efficiency, competition, and capital formation;

“(ii) evaluate whether, consistent with obtaining regulatory objectives, the regulation is tailored to impose the least burden on society, including market participants, individuals, businesses of differing sizes, and other entities (including State and local governmental entities), taking into account, to the extent practicable, the cumulative costs of regulations; and

“(iii) evaluate whether the regulation is inconsistent, incompatible, or duplicative of other Federal regulations.

“(B) ADDITIONAL CONSIDERATIONS.—In addition, in making a reasoned determination of the costs and benefits of a potential regulation, the Commission shall, to the extent that each is relevant to the particular proposed regulation, take into consideration the impact of the regulation on—

“(i) investor choice;

“(ii) market liquidity in the securities markets; and

“(iii) small businesses

“(3) EXPLANATION AND COMMENTS.—The Commission shall explain in its final rule the nature of comments that it received, including those from the industry or consumer groups concerning the potential costs or benefits of the proposed rule or proposed rule change, and shall provide a response to those comments in its final rule, including an explanation of any changes that were made in response to those comments and the reasons that the Commission did not incorporate those industry group concerns related to the potential costs or benefits in the final rule.

“(4) REVIEW OF EXISTING REGULATIONS.—Not later than 1 year after the date of enactment of the SEC Regulatory Accountability Act, and every 5 years thereafter, the Commission shall review its regulations to determine whether any such regulations are outmoded, ineffective, insufficient, or excessively burdensome, and shall modify, streamline, expand, or repeal them in accordance with such review.

“(5) POST-ADOPTION IMPACT ASSESSMENT.—

“(A) IN GENERAL.—Whenever the Commission adopts or amends a regulation designated as a ‘major rule’ within the meaning of section 804(2) of title 5, United States Code, it shall state, in its adopting release, the following:

“(i) The purposes and intended consequences of the regulation.

“(ii) Appropriate post-implementation quantitative and qualitative metrics to measure the economic impact of the regulation and to measure the extent to which the regulation has accomplished the stated purposes.

“(iii) The assessment plan that will be used, consistent with the requirements of subparagraph (B) and under the supervision of the Chief Economist of the Commission, to assess whether the regulation has achieved the stated purposes.

“(iv) Any unintended or negative consequences that the Commission foresees may result from the regulation.

“(B) REQUIREMENTS OF ASSESSMENT PLAN AND REPORT.—

“(i) REQUIREMENTS OF PLAN.—The assessment plan required under this paragraph shall consider the costs, benefits, and intended and unintended consequences of the regulation. The plan shall specify the data to be collected, the methods for collection and analysis of the data and a date for completion of the assessment.

“(ii) SUBMISSION AND PUBLICATION OF REPORT.—The Chief Economist shall submit the completed assessment report to the Commission no later than 2 years after the publication of the adopting release, unless the Commission, at the request of the Chief Economist, has published at least 90 days before such date a notice in the Federal Register extending the date and providing specific reasons why an extension is necessary. Within 7 days after submission to the Commission of the final assessment report, it shall be published in the Federal Register for notice and comment. Any material modification of the plan, as necessary to assess unforeseen aspects or consequences of the regulation, shall be promptly published in the Federal Register for notice and comment.

“(iii) DATA COLLECTION NOT SUBJECT TO NOTICE AND COMMENT REQUIREMENTS.—If the Commission has published its assessment plan for notice and comment, specifying the data to be collected and method of collection, at least 30 days prior to adoption of a final regulation or amendment, such collection of data shall not be subject to the notice and comment requirements in section 3506(c) of title 44, United States Code (commonly referred to as the Paperwork Reduction Act). Any material modifications of the plan that require collection of data not previously published for notice and comment shall also be exempt from such requirements if the Commission has published notice for comment in the Federal Register of the additional data to be collected, at least 30 days prior to initiation of data collection.

“(iv) FINAL ACTION.—Not later than 180 days after publication of the assessment report in the Federal Register, the Commission shall issue for notice and comment a proposal to amend or rescind the regulation, or publish a notice that the Commission has determined that no action will be taken on the regulation. Such a notice will be deemed a final agency action.

“(6) COVERED REGULATIONS AND OTHER AGENCY ACTIONS.—Solely as used in this subsection, the term ‘regulation’—

“(A) means an agency statement of general applicability and future effect that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including rules, orders of general applicability, interpretive releases, and other statements of general applicability that the agency intends to have the force and effect of law; and

“(B) does not include—

“(i) a regulation issued in accordance with the formal rulemaking provisions of section 556 or 557 of title 5, United States Code;

“(ii) a regulation that is limited to agency organization, management, or personnel matters;

“(iii) a regulation promulgated pursuant to statutory authority that expressly prohibits compliance with this provision; and

“(iv) a regulation that is certified by the agency to be an emergency action, if such certification is published in the Federal Register.”.

SEC. 3. SUBMISSION OF PLAN FOR SUBJECTING OTHER REGULATORY ENTITIES TO COST AND BENEFIT REQUIREMENTS.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall provide to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report setting forth a plan for subjecting the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, and any national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) to the requirements subsection (e) of section 23 of such Act, as added by this Act.

PURPOSE AND SUMMARY

H.R. 2308, the “SEC Regulatory Accountability Act,” requires the Securities and Exchange Commission (SEC) to conduct cost-benefit analyses in order to ensure that the benefits of its regulation justify the costs of the regulation.

H.R. 2308 requires, in general, the SEC to identify a problem and assess its significance before the SEC issues a rule in order to determine whether regulation is warranted. The bill requires the

SEC's Chief Economist to conduct a cost-benefit analysis of proposed regulations, and it requires that the benefits of proposed regulations justify their costs before the SEC can issue them. The bill requires the SEC to identify and assess alternatives to regulations that it considers, and to explain why a regulation that it issues meets regulatory objectives more effectively than the alternatives. The bill requires the SEC to ensure that its regulations be accessible, consistent, written in plain language, and easy to understand, and to measure and seek to improve the results of regulatory requirements.

More specifically, H.R. 2308 requires the SEC, in deciding whether and how to regulate, to assess the costs and benefits of regulatory alternatives, including the alternative of not regulating, and to choose the approach that maximizes net benefits. The bill requires the SEC to specifically consider whether rulemaking will promote efficiency, competition, and capital formation; to evaluate whether the regulation is tailored to impose the least burden on society—including market participants, individuals, different-sized businesses, and other entities (including state and local governments)—taking into account the cumulative costs of regulation; and to evaluate whether the regulation is inconsistent with, incompatible with, or duplicative of other federal regulations. The bill also requires the SEC to consider the effect of a potential regulation on investor choice, market liquidity, and small businesses. The SEC is not required to conduct cost-benefit analyses for orders that are not “generally applicable,” formal rulemakings related to enforcement actions, or regulations certified by the SEC as an emergency action.

H.R. 2308 requires the SEC to review its existing regulations within one year of the bill's enactment and every five years thereafter, to determine whether any of its regulations are outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with that review. The bill also requires the SEC to conduct a post-adoption or post-amendment assessment of any major regulation to measure the economic impact of the regulation and the extent to which it has accomplished its stated purposes.

Finally, H.R. 2308 requires the SEC to report its plans to Congress for subjecting the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, and any national securities association registered under section 15A of the Securities Exchange Act of 1934 to the requirements of the bill within one year of the bill's enactment.

BACKGROUND AND NEED FOR LEGISLATION

Introduced by Capital Markets and Government Sponsored Enterprises Subcommittee Chairman Garrett, H.R. 2308 requires the SEC to generally follow the principles set forth in Executive Order No. 13563, which directs non-independent executive branch agencies to adopt regulations only if the benefits of the regulations justify their costs; to tailor regulations to impose the least burden on society; and to develop plans for retrospectively analyzing rules to identify those that are outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal

them accordingly.¹ Although Executive Order No. 13563 applies to non-independent agencies, it does not apply to independent agencies, such as the SEC. As the Executive Office of the President noted on February 2, 2011, “Executive Order 13563 does not apply to independent agencies.” Nonetheless, “such agencies are encouraged to give consideration to all of its provisions, consistent with their legal authority. In particular, such agencies are encouraged to consider undertaking, on a voluntary basis, retrospective analysis of existing rules.” SEC Chairman Mary Schapiro has indicated that under her leadership, the SEC would voluntarily follow the guidance set forth in Executive Order No. 13563.

Nonetheless, neither Executive Order 13563 nor statute compels the SEC to weigh the costs and benefits of the regulations that it issues. The SEC Office of Inspector General has reported that the SEC “is not subject to an express statutory requirement to conduct cost-benefit analyses for its rulemakings.” Because there is no express statutory requirement that the SEC conduct cost-benefit analyses, the SEC has neither uniformly nor consistently conducted such analyses as part of its rulemaking. As the SEC Office of Inspector General noted, “The extent of quantitative discussion of cost-benefit analyses varied among rulemakings,” and “none of the rulemakings examined in our phase II review attempted to quantify either benefits or costs other than information collection costs as required by the Paperwork Reduction Act.” The SEC Inspector General also found that “some SEC Dodd-Frank Act rulemakings lacked clear, explicit explanations of the justification for regulatory action.”²

Perhaps the most compelling rationale for H.R. 2308 was offered by the U.S. Court of Appeals for the D.C. Circuit when it struck down the SEC’s proxy access rule. As the court’s unanimous opinion explained, the SEC—in promulgating its rule—“inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its predictive judgments; contradicted itself; and failed to respond to substantial problems raised by commenters.”³ To address the shortcomings in the SEC’s rulemaking identified by both the SEC’s own Office of Inspector General and the D.C. Circuit Court of Appeals, H.R. 2308 mandates that the SEC conduct cost-benefit analyses, rather than leaving that decision to the discretion of the SEC’s Chairman.

HEARINGS

On September 15, 2011, the Committee on Financial Services held a hearing titled “Fixing the Watchdog: Legislative Proposals to Improve and Enhance the Securities and Exchange Commission,” at which the provisions of H.R. 2308 were discussed. The following witnesses testified:

¹ Exec. Order No. 13,563, “Improving Regulation and Regulatory Review,” 76 Fed. 3,821 (Jan. 21, 2011).

² See *Follow-Up Review of Cost-Benefit Analyses in Selected SEC Dodd-Frank Act Rulemakings*, Office of Inspector General, Office of Audits, Jan. 27, 2012, available at: <http://www.sec-oig.gov/Reports/Audits/Inspection/2012/499.pdf>.

³ See *Business Roundtable v. SEC*, 647 F.3d 1144. (D.C. Cir. 2011).

- The Honorable Mary Schapiro, Chairman, U.S. Securities and Exchange Commission
- Mr. Shubh Saumya, Partner and Managing Director, Boston Consulting Group
- The Honorable Paul Atkins, Visiting Scholar, American Enterprise Institute, and Former Commissioner, U.S. Securities and Exchange Commission
- Mr. Stephen D. Crimmins, Partner, K&L Gates LLP, and Former Deputy Chief Litigation Counsel, Division of Enforcement, U.S. Securities and Exchange Commission
- Mr. Jonathan G. “Jack” Katz, Former Secretary, U.S. Securities and Exchange Commission, on behalf of the U.S. Chamber of Commerce
- The Honorable Harvey Pitt, Chief Executive Officer, Kalorama Partners, LLC, and Former Chairman, U.S. Securities and Exchange Commission
- Mr. J.W. Verret, Assistant Professor of Law, George Mason University School of Law

COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets and Government Sponsored Enterprises met in open session on November 15, 2011, and ordered H.R. 2308, as amended, favorably reported to the full Committee by a record vote of 19 yeas and 15 nays (Record vote no. CM–46).

The Committee on Financial Services met in open session on February 16, 2012, and ordered H.R. 2308, as amended, favorably reported to the House by a record vote of 30 yeas and 26 nays (Record vote no. FC–62).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Chairman Bachus to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 30 yeas and 26 nays (Record vote no. FC–62). The names of Members voting for and against follow:

RECORD VOTE NO. FC–62

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X	.....	.....	Mr. Frank (MA) .....	.....	X	.....
Mr. Hensarling	X	.....	.....	Ms. Waters .....	.....	X	.....
Mr. King (NY) .....	.....	.....	.....	Mrs. Maloney .....	.....	X	.....
Mr. Royce	X	.....	.....	Mr. Gutierrez .....	.....	X	.....
Mr. Lucas	X	.....	.....	Ms. Velázquez .....	.....	X	.....
Mr. Paul .....	.....	.....	.....	Mr. Watt .....	.....	X	.....
Mr. Manzullo	X	.....	.....	Mr. Ackerman .....	.....	X	.....
Mr. Jones	X	.....	.....	Mr. Sherman .....	.....	X	.....
Mrs. Biggert	X	.....	.....	Mr. Meeks .....	.....	X	.....
Mr. Gary G. Miller (CA) .....	.....	.....	.....	Mr. Capuano .....	.....	X	.....
Mrs. Capito	X	.....	.....	Mr. Hinojosa .....	.....	X	.....
Mr. Garrett	X	.....	.....	Mr. Clay .....	.....	X	.....
Mr. Neugebauer	X	.....	.....	Mrs. McCarthy (NY) .....	.....	X	.....
Mr. McHenry	X	.....	.....	Mr. Baca .....	.....	X	.....
Mr. Campbell .....	.....	.....	.....	Mr. Lynch .....	.....	X	.....
Mrs. Bachmann	X	.....	.....	Mr. Miller (NC) .....	.....	X	.....

RECORD VOTE NO. FC-62—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. McCotter	X	.....	.....	Mr. David Scott (GA) .....	.....	X	.....
Mr. McCarthy (CA)	X	.....	.....	Mr. Al Green (TX) .....	.....	X	.....
Mr. Pearce	X	.....	.....	Mr. Cleaver .....	.....	.....	.....
Mr. Posey	X	.....	.....	Ms. Moore .....	.....	X	.....
Mr. Fitzpatrick	X	.....	.....	Mr. Ellison .....	.....	X	.....
Mr. Westmoreland	X	.....	.....	Mr. Perlmutter .....	.....	X	.....
Mr. Luetkemeyer	X	.....	.....	Mr. Donnelly .....	.....	X	.....
Mr. Huizenga	X	.....	.....	Mr. Carson .....	.....	X	.....
Mr. Duffy	X	.....	.....	Mr. Himes .....	.....	X	.....
Ms. Hayworth	X	.....	.....	Mr. Peters .....	.....	X	.....
Mr. Renacci	X	.....	.....	Mr. Carney .....	.....	X	.....
Mr. Hurt	X	.....	.....		
Mr. Dold	X	.....	.....		
Mr. Schweikert	X	.....	.....		
Mr. Grimm	X	.....	.....		
Mr. Canseco	X	.....	.....		
Mr. Stivers	X	.....	.....		
Mr. Fincher	X	.....	.....		

During consideration of H.R. 2308 by the Committee, the following amendments were considered:

1. An amendment offered by Mr. Carson, no. 3, to strike the operative provisions of the bill and instead require the Government Accountability Office (GAO) to evaluate the uses and limits of cost-benefit analyses as part of the SEC's regulatory processes, to compare the SEC's use of economic analysis in rulemaking to that of other financial regulatory agencies, and to identify metrics to evaluate the benefits and costs of regulatory action, was not agreed to by a record vote of 25 yeas and 30 nays (Record vote no. FC-58).

RECORD VOTE NO. FC-58

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X	.....	Mr. Frank (MA)	X	.....	.....
Mr. Hensarling	X	.....	Ms. Waters	X	.....	.....
Mr. King (NY)	Mrs. Maloney .....	.....	.....	.....
Mr. Royce	X	.....	Mr. Gutierrez	X	.....	.....
Mr. Lucas	X	.....	Ms. Velázquez	X	.....	.....
Mr. Paul	Mr. Watt	X	.....	.....
Mr. Manzullo	X	.....	Mr. Ackerman	X	.....	.....
Mr. Jones	X	.....	Mr. Sherman	X	.....	.....
Mrs. Biggert	X	.....	Mr. Meeks	X	.....	.....
Mr. Gary G. Miller (CA)	Mr. Capuano	X	.....	.....
Mrs. Capito	X	.....	Mr. Hinojosa	X	.....	.....
Mr. Garrett	X	.....	Mr. Clay	X	.....	.....
Mr. Neugebauer	X	.....	Mrs. McCarthy (NY)	X	.....	.....
Mr. McHenry	X	.....	Mr. Baca	X	.....	.....
Mr. Campbell	Mr. Lynch	X	.....	.....
Mrs. Bachmann	X	.....	Mr. Miller (NC)	X	.....	.....
Mr. McCotter	X	.....	Mr. David Scott (GA)	X	.....	.....
Mr. McCarthy (CA)	X	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Pearce	X	.....	Mr. Cleaver .....	.....	.....	.....
Mr. Posey	X	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick	X	.....	Mr. Ellison	X	.....	.....
Mr. Westmoreland	X	.....	Mr. Perlmutter	X	.....	.....
Mr. Luetkemeyer	X	.....	Mr. Donnelly	X	.....	.....
Mr. Huizenga	X	.....	Mr. Carson	X	.....	.....
Mr. Duffy	X	.....	Mr. Himes	X	.....	.....
Ms. Hayworth	X	.....	Mr. Peters	X	.....	.....
Mr. Renacci	X	.....	Mr. Carney	X	.....	.....

RECORD VOTE NO. FC-58—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Hurt		X	.....			
Mr. Dold		X	.....			
Mr. Schweikert		X	.....			
Mr. Grimm		X	.....			
Mr. Canseco		X	.....			
Mr. Stivers		X	.....			
Mr. Fincher		X	.....			

2. An amendment offered by Mr. Miller of North Carolina, no. 4, to strike the operative provisions of the bill and instead require the GAO to study the costs and benefits of implementing H.R. 2308, was not agreed to by a record vote of 25 yeas and 30 nays (Record vote no. FC-59).

RECORD VOTE NO. FC-59

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X	.....	Mr. Frank (MA)	X	.....	.....
Mr. Hensarling		X	.....	Ms. Waters	X	.....	.....
Mr. King (NY)	Mrs. Maloney .....		.....	.....
Mr. Royce		X	.....	Mr. Gutierrez	X	.....	.....
Mr. Lucas		X	.....	Ms. Velázquez	X	.....	.....
Mr. Paul	Mr. Watt	X	.....	.....
Mr. Manzullo		X	.....	Mr. Ackerman	X	.....	.....
Mr. Jones		X	.....	Mr. Sherman	X	.....	.....
Mrs. Biggert		X	.....	Mr. Meeks	X	.....	.....
Mr. Gary G. Miller (CA)	Mr. Capuano	X	.....	.....
Mrs. Capito		X	.....	Mr. Hinojosa	X	.....	.....
Mr. Garrett		X	.....	Mr. Clay	X	.....	.....
Mr. Neugebauer		X	.....	Mrs. McCarthy (NY)	X	.....	.....
Mr. McHenry		X	.....	Mr. Baca	X	.....	.....
Mr. Campbell	Mr. Lynch	X	.....	.....
Mrs. Bachmann		X	.....	Mr. Miller (NC)	X	.....	.....
Mr. McCotter		X	.....	Mr. David Scott (GA)	X	.....	.....
Mr. McCarthy (CA)		X	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Pearce		X	.....	Mr. Cleaver .....		.....	.....
Mr. Posey		X	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick		X	.....	Mr. Ellison	X	.....	.....
Mr. Westmoreland		X	.....	Mr. Perlmutter	X	.....	.....
Mr. Luetkemeyer		X	.....	Mr. Donnelly	X	.....	.....
Mr. Huizenga		X	.....	Mr. Carson	X	.....	.....
Mr. Duffy		X	.....	Mr. Himes	X	.....	.....
Ms. Hayworth		X	.....	Mr. Peters	X	.....	.....
Mr. Renacci		X	.....	Mr. Carney	X	.....	.....
Mr. Hurt		X	.....			
Mr. Dold		X	.....			
Mr. Schweikert		X	.....			
Mr. Grimm		X	.....			
Mr. Canseco		X	.....			
Mr. Stivers		X	.....			
Mr. Fincher		X	.....			

3. An amendment offered by Ms. Waters, no. 5, to make the cost-benefit analyses mandated by H.R. 2308 subject to appropriations made specifically for the purpose of conducting these analyses and to authorize appropriations for these analyses, was not agreed to by a record vote of 26 yeas and 30 nays (Record vote no. FC-60).

RECORD VOTE NO. FC-60

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X	.....	Mr. Frank (MA)	X	.....	.....
Mr. Hensarling		X	.....	Ms. Waters	X	.....	.....
Mr. King (NY)	Mrs. Maloney	X	.....	.....
Mr. Royce		X	.....	Mr. Gutierrez	X	.....	.....
Mr. Lucas		X	.....	Ms. Velázquez	X	.....	.....
Mr. Paul	Mr. Watt	X	.....	.....
Mr. Manzullo		X	.....	Mr. Ackerman	X	.....	.....
Mr. Jones		X	.....	Mr. Sherman	X	.....	.....
Mrs. Biggert		X	.....	Mr. Meeks	X	.....	.....
Mr. Gary G. Miller (CA)	Mr. Capuano	X	.....	.....
Mrs. Capito		X	.....	Mr. Hinojosa	X	.....	.....
Mr. Garrett		X	.....	Mr. Clay	X	.....	.....
Mr. Neugebauer		X	.....	Mrs. McCarthy (NY)	X	.....	.....
Mr. McHenry		X	.....	Mr. Baca	X	.....	.....
Mr. Campbell	Mr. Lynch	X	.....	.....
Mrs. Bachmann		X	.....	Mr. Miller (NC)	X	.....	.....
Mr. McCotter		X	.....	Mr. David Scott (GA)	X	.....	.....
Mr. McCarthy (CA)		X	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Pearce		X	.....	Mr. Cleaver .....		.....	.....
Mr. Posey		X	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick		X	.....	Mr. Ellison	X	.....	.....
Mr. Westmoreland		X	.....	Mr. Perlmutter	X	.....	.....
Mr. Luetkemeyer		X	.....	Mr. Donnelly	X	.....	.....
Mr. Huizenga		X	.....	Mr. Carson	X	.....	.....
Mr. Duffy		X	.....	Mr. Himes	X	.....	.....
Ms. Hayworth		X	.....	Mr. Peters	X	.....	.....
Mr. Renacci		X	.....	Mr. Carney	X	.....	.....
Mr. Hurt		X	.....			
Mr. Dold		X	.....			
Mr. Schweikert		X	.....			
Mr. Grimm		X	.....			
Mr. Canseco		X	.....			
Mr. Stivers		X	.....			
Mr. Fincher		X	.....			

4. An amendment offered by Messrs. Schweikert and Garrett, no. 6, to require the SEC to consider the impact of proposed regulations on small businesses in determining the costs and benefits of potential regulation; and to require the SEC, when it amends or adopts a major rule, to list in its adopting release any unintended or negative consequences that the SEC foresees may result from the regulation, was agreed to by a record vote of 30 yeas and 26 nays (Record vote no. 61).

RECORD VOTE NO. FC-61

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X	.....	.....	Mr. Frank (MA)		X	.....
Mr. Hensarling	X	.....	.....	Ms. Waters		X	.....
Mr. King (NY) .....			.....	Mrs. Maloney		X	.....
Mr. Royce	X	.....	.....	Mr. Gutierrez		X	.....
Mr. Lucas	X	.....	.....	Ms. Velázquez		X	.....
Mr. Paul .....			.....	Mr. Watt		X	.....
Mr. Manzullo	X	.....	.....	Mr. Ackerman		X	.....
Mr. Jones	X	.....	.....	Mr. Sherman		X	.....
Mrs. Biggert	X	.....	.....	Mr. Meeks		X	.....
Mr. Gary G. Miller (CA) .....			.....	Mr. Capuano		X	.....
Mrs. Capito	X	.....	.....	Mr. Hinojosa		X	.....
Mr. Garrett	X	.....	.....	Mr. Clay		X	.....
Mr. Neugebauer	X	.....	.....	Mrs. McCarthy (NY)		X	.....
Mr. McHenry	X	.....	.....	Mr. Baca		X	.....
Mr. Campbell .....			.....	Mr. Lynch		X	.....

RECORD VOTE NO. FC-61—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. Bachmann	X	.....	.....	Mr. Miller (NC) .....	.....	X	.....
Mr. McCotter	X	.....	.....	Mr. David Scott (GA) ..	.....	X	.....
Mr. McCarthy (CA)	X	.....	.....	Mr. Al Green (TX) .....	.....	X	.....
Mr. Pearce	X	.....	.....	Mr. Cleaver .....	.....	.....	.....
Mr. Posey	X	.....	.....	Ms. Moore .....	.....	X	.....
Mr. Fitzpatrick	X	.....	.....	Mr. Ellison .....	.....	X	.....
Mr. Westmoreland	X	.....	.....	Mr. Perlmutter .....	.....	X	.....
Mr. Luetkemeyer	X	.....	.....	Mr. Donnelly .....	.....	X	.....
Mr. Huizenga	X	.....	.....	Mr. Carson .....	.....	X	.....
Mr. Duffy	X	.....	.....	Mr. Himes .....	.....	X	.....
Ms. Hayworth	X	.....	.....	Mr. Peters .....	.....	X	.....
Mr. Renacci	X	.....	.....	Mr. Carney .....	.....	X	.....
Mr. Hurt	X	.....	.....		
Mr. Dold	X	.....	.....		
Mr. Schweikert	X	.....	.....		
Mr. Grimm	X	.....	.....		
Mr. Canseco	X	.....	.....		
Mr. Stivers	X	.....	.....		
Mr. Fincher	X	.....	.....		

The following amendments were also considered by the Committee:

1. An amendment offered by Mr. Miller of California, no. 1, to require the SEC to explain in final rules that it issues the nature of comments that it received concerning potential costs or benefits of a proposed rule or proposed rule change and to respond to those comments in its final rule, was agreed to by voice vote.

2. An amendment in the nature of a substitute offered by Mrs. Maloney, no. 2, to strike the bill's text and replace it with a sense of Congress relating to existing requirements for economic analysis applicable to the SEC, was not agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objectives of H.R. 2308, the "SEC Regulatory Accountability Act," are the following:

- To require the SEC to conduct cost-benefit analyses in order to ensure that the benefits of any of its regulations justify the costs of the regulation;
- To require the SEC to identify a problem and assess its significance before the SEC issues a rule in order to determine whether regulation is warranted;
- To require the SEC to use its Chief Economist to assess the costs and benefits of proposed regulations;
- To require that the benefits of regulations proposed by the SEC justify the costs of those regulations before the SEC can issue them;

- To require the SEC to identify alternatives to new regulations that it considers, including modifications of existing regulations;
- To ensure that regulations issued by the SEC are accessible, consistent, written in plain language, and easy to understand, and that the SEC seek to improve the results of its regulatory requirements;
- To require the SEC to consider whether proposed regulations will promote efficiency, competition, and capital formation;
- To require the SEC to tailor regulations to impose the least burden on society from a cumulative cost standpoint, including the costs imposed on market participants, different-sized businesses, state and local governments, and other entities;
- To require the SEC to consider the effect of regulation on investor choice, market liquidity, and small businesses;
- To require the SEC to review its existing regulations to determine whether any are outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them accordingly;
- To require the SEC to conduct a post-adoption impact assessment of major regulations that it adopts or amends; and
- To require the SEC to report a plan to Congress for requiring regulatory entities registered with the SEC to conduct cost-benefit analyses for the regulations they promulgate.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

APRIL 5, 2012.

Hon. SPENCER BACHUS,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2308, the SEC Regulatory Accountability Act.

DOUGLAS W. ELMENDORF.

H.R. 2308—SEC Regulatory Accountability Act

Based on information from the SEC, CBO estimates that implementing H.R. 2308 would cost the SEC about \$22 million over the 2013–2017 period, assuming appropriation of the necessary amounts. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates the net budgetary effect of the SEC’s activities undertaken to implement H.R. 2308 would not be significant, assuming appropriation actions consistent with the commission’s authorities.

H.R. 2308 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2308 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

[illegible]

	By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013–2017	2013–2022	
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS													
Estimated Increase in Deficit	0	*	*	*	*	*	*	*	*	*	1	2	

Notes: * = less than \$500,000. Components may not sum to totals because of rounding.

CBO estimates that implementing H.R. 2308 would cost the Securities and Exchange Commission \$22 million over the 2013–2017 period, assuming appropriation of the necessary amounts. The commission is authorized to collect fees sufficient to offset its annual appropriations. CBO estimates, therefore, that the net budgetary effect of the SEC's activities undertaken to implement H.R. 2308 would not be significant, assuming appropriation actions consistent with the commission's authorities.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted before the end of fiscal year 2012, that the necessary amounts will be appropriated for each year, and that spending will follow historical patterns for the affected agencies.

Spending subject to appropriation

H.R. 2308 would require the SEC to expand the amount of analysis performed when developing or amending regulations. Specifically, the bill would require the SEC to:

- Assess the significance of the problem the regulation is designed to address,
- Determine whether the estimated costs of the proposed regulation justify its estimated benefits, and
- Identify alternatives to the proposed regulation that are available.

Further, H.R. 2308 would require the SEC to review its regulations every five years to determine whether they are outmoded, ineffective, or excessively burdensome. Using the results of the review, the agency would be required to consider modifying or repealing such rules.

For major rules (that is, rules expected to have an economic impact greater than \$100 million annually), the bill also would require the SEC to develop and publish a plan to assess whether the regulation has achieved its stated purposes. H.R. 2308 would direct the agency, no later than two years after the date such a rule was published, to publish an assessment that considers the costs, benefits, and consequences of the rule using performance measures that were identified when the rule was adopted.

Finally, the bill would direct the SEC to develop a plan for applying the new rulemaking requirements to the PCAOB, the Municipal Securities Rulemaking Board (MSRB), and any national securities association that is registered with the SEC.

Based on information from the SEC, CBO estimates that the commission would need 20 additional staff positions to handle the new rulemaking, reporting, and analytical activities required under the bill. CBO estimates that implementing H.R. 2308 would cost the SEC \$22 million over the 2013–2017 period, assuming appropriation of the necessary amounts, for additional personnel and overhead expenses. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates the net budgetary effect of the SEC's activities undertaken to implement H.R. 2308 would not be significant, assuming appropriation actions consistent with the commission's authorities.

Direct spending

Enacting H.R. 2308 would increase both direct spending and revenues by applying the new procedural requirements to the PCAOB. The agency, whose spending authority is not subject to appropriation action, is authorized to collect fees to offset its operating expenses. Those fees are recorded in the budget as revenues.

Based on information from the PCAOB, CBO estimates that enacting H.R. 2308 would increase direct spending by \$8 million over the 2013–2022 period to cover additional personnel and overhead costs. In addition, CBO assumes that the PCAOB would exercise its authority to increase fee collections to offset those additional costs. Because payments of those additional fees would reduce payroll and income tax liabilities, the net revenue increase would be less than the amount collected from the fees. Hence, CBO estimates that enacting the bill would increase revenues by \$6 million over the same period, net of effects on payroll and income taxes. All together, CBO estimates that enacting H.R. 2308 would increase budget deficits by about \$2 million over the 2013–2022 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2308, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON FEBRUARY 16, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012– 2017	2012– 2022
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	1	2
Memorandum:													
Changes in													
Outlays	0	0	0	1	1	1	1	1	1	1	1	3	8
Changes in													
Revenues	0	0	0	1	1	1	1	1	1	1	1	2	6

Note: Components may not sum to totals because of rounding.

Estimated impact on state, local, and tribal governments: H.R. 2308 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 2308 contains private-sector mandates on entities required to pay fees assessed by the SEC or PCAOB and on certain private regulatory organizations. Assuming the SEC and PCAOB would increase annual fee collections to offset the costs of their additional regulatory activities, the bill would increase the costs of existing mandates by requiring certain private entities to pay higher fees. The bill also would require private regulatory organizations to incorporate additional analyses into their rulemaking processes.

Based on information from the SEC and PCAOB, CBO estimates that the cost for those agencies to implement the additional regulatory activities required by the bill, and the necessary increase in fees to offset those costs, would be about \$5 million per year over

the next several years. In addition, because private regulatory agencies issue fewer rules than the SEC each year on average, the incremental cost for those organizations to comply with the new rulemaking requirements would probably amount to less than the additional costs incurred by the SEC to implement the same requirements. Consequently, CBO estimates that the cost of the private-sector mandates in the bill would fall below the annual threshold established in UMRA (\$146 million annually adjusted for inflation).

Estimate prepared by: Federal Costs: Susan Willie; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Vi Nguyen.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2308 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

The short title of the bill is the “SEC Regulatory Accountability Act.”

Section 2. Consideration by the Securities and Exchange Commission of the costs and benefits of its regulations and certain other agency actions

This section amends the Securities Exchange Act of 1934 (15 U.S.C. 78w) to require the SEC to consider the costs and benefits of its regulations. The section requires the SEC to identify a problem and assess its significance before the SEC issues a regulation in order to determine whether regulation is warranted. This section also requires the SEC’s Chief Economist to conduct a qualitative and quantitative cost-benefit analysis of intended regulations, and it requires the SEC to propose or adopt a regulation only on a reasoned determination that the benefits of the intended regulation justify the costs of the regulation. This section also requires that

the SEC identify and assess available alternatives to the regulation that were considered, including modification of existing regulations, and to explain why the proposed regulation meets the regulatory objectives more effectively than the alternatives. The section also requires the SEC to ensure that any regulation is accessible, consistent, written in plain language, and easy to understand, and that the SEC seek to improve the actual results of regulatory requirements.

The section also requires the SEC, in deciding whether and how to regulate, to assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating, and to choose the approach that maximizes net benefits. This section specifically requires the SEC to consider—consistent with the requirements of section 3(f) of the Securities Act of 1933, section 202(c) of the Investment Advisers Act of 1940, and section 2(c) of the Investment Company Act of 1940—whether rulemaking will promote efficiency, competition, and capital formation. This section requires the SEC to evaluate whether—consistent with achieving regulatory objectives—a regulation is tailored to impose the least burden on society, including market participants, individuals, businesses of differing sizes, and other entities (including state and local governments), taking into account, to the extent practicable, the cumulative costs of regulations. In addition, this section requires the SEC to evaluate whether a regulation is inconsistent with, incompatible with, or duplicative of other federal regulations.

This section also requires the SEC to consider, to the extent relevant to the particular proposed regulation, the impact of a proposed regulation on investor choice, market liquidity in the securities markets, and small businesses.

This section also requires the SEC to explain in its final rule the nature of comments that it received, including those from industry or consumer groups concerning the potential costs or benefits of the proposed rule or rule change, and to provide a response to the comments contained in its final rule, including an explanation of any changes made in response to those comments and the reasons that the SEC did not incorporate industry group concerns related to the potential costs or benefits in the final rule.

This section also requires the SEC, not later than one year after enactment of the bill and every five years thereafter, to review its regulations to determine whether any regulations are outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal such regulations in accordance with that review.

This section also requires the SEC to conduct a post-adoption impact assessment of any “major rule,” as defined by 5 U.S.C. § 804(2), that it adopts or amends. This section requires the SEC, when it adopts or amends a “major rule,” to state in the adopting release the following: the purposes and intended consequences of the rule; post-implementation quantitative and qualitative metrics to measure the rule’s economic impact and the extent to which the rule has accomplished its stated purposes; an assessment plan to evaluate whether the rule has achieved its stated purpose; and any unintended or negative consequences that the SEC foresees may result from the rule. This section also requires the assessment plan to consider the costs, benefits, and intended and unintended con-

sequences of the rule, and to specify the data to be collected, the methods for collecting and analyzing data, and the deadline for the assessment to be completed.

This section also requires the SEC’s Chief Economist to submit an assessment report to the SEC no later than two years after the publication of a regulation’s adopting release, unless the SEC, at the request of the Chief Economist, has published an explanatory notice of extension in the Federal Register at least 90 days before the assessment is due. This section requires that the assessment report be published in the Federal Register seven days after it is submitted to the SEC for notice and comment. This section provides that if the SEC has published its assessment plan for notice and comment, specifying the data to be collected and the method of collection, at least 30 days prior to the adoption of a final regulation or amendment, such data collection will not be subject to the notice and comment requirements of the Paperwork Reduction Act. Similarly, this section provides that modifications of the assessment plan that require the collection of data not previously published for notice and comment are exempt from the notice and comment requirements of the Paperwork Reduction Act if the SEC has published notice for comment in the Federal Register of additional data to be collected at least 30 days before it is collected. This section requires the SEC, within 180 days of the assessment report’s publication in the Federal Register, to issue for notice and comment a proposal to amend or rescind the rule or to publish a notice that the SEC has determined that no action will be taken on the regulation.

This section also defines the term “regulation”—as used in this section—as an SEC statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of the SEC, including rules, orders of general applicability, interpretive releases, and other statements of general applicability that the SEC intends to have the force and effect of law, and does not include a regulation issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act; a regulation limited to SEC organization, management, or personnel matters; a regulation promulgated pursuant to statutory authority that expressly prohibits compliance with this provision; and a regulation certified by the SEC to be an emergency action, if such certification is published in the Federal Register.

Section 3. Submission of plan for subjecting other regulatory entities to cost and benefit requirements

This section requires the SEC to submit within one year of the bill’s enactment to the House Committee on Financial Services and to the Senate Committee on Banking, Housing, and Urban Affairs a report setting forth a plan for subjecting the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, and any national securities association registered under section 15A of the Securities Exchange Act of 1934 to the requirements of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934**TITLE I—REGULATION OF SECURITIES EXCHANGES**

* * * * *

RULES, REGULATIONS, AND ORDERS; ANNUAL REPORTS

SEC. 23. (a) * * *

* * * * *

(e) *CONSIDERATION OF COSTS AND BENEFITS.*—

(1) *IN GENERAL.*—*Before issuing a regulation under the securities laws, as defined in section 3(a), the Commission shall—*

(A) *clearly identify the nature and source of the problem that the proposed regulation is designed to address, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted;*

(B) *utilize the Chief Economist to assess the costs and benefits, both qualitative and quantitative, of the intended regulation and propose or adopt a regulation only on a reasoned determination that the benefits of the intended regulation justify the costs of the regulation;*

(C) *identify and assess available alternatives to the regulation that were considered, including modification of an existing regulation, together with an explanation of why the regulation meets the regulatory objectives more effectively than the alternatives; and*

(D) *ensure that any regulation is accessible, consistent, written in plain language, and easy to understand and shall measure, and seek to improve, the actual results of regulatory requirements.*

(2) *CONSIDERATIONS AND ACTIONS.*—

(A) *REQUIRED ACTIONS.*—*In deciding whether and how to regulate, the Commission shall assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating, and choose the approach that maximizes net benefits. Specifically, the Commission shall—*

(i) *consistent with the requirements of section 3(f) (15 U.S.C. 78c(f)), section 2(b) of the Securities Act of 1933 (15 U.S.C. 77b(b)), section 202(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(c)), and section 2(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(c)), consider whether the rulemaking will promote efficiency, competition, and capital formation;*

(ii) *evaluate whether, consistent with obtaining regulatory objectives, the regulation is tailored to impose the least burden on society, including market participants, individuals, businesses of differing sizes, and*

other entities (including State and local governmental entities), taking into account, to the extent practicable, the cumulative costs of regulations; and

(iii) evaluate whether the regulation is inconsistent, incompatible, or duplicative of other Federal regulations.

(B) ADDITIONAL CONSIDERATIONS.—In addition, in making a reasoned determination of the costs and benefits of a potential regulation, the Commission shall, to the extent that each is relevant to the particular proposed regulation, take into consideration the impact of the regulation on—

(i) investor choice;

(ii) market liquidity in the securities markets; and

(iii) small businesses

(3) EXPLANATION AND COMMENTS.—The Commission shall explain in its final rule the nature of comments that it received, including those from the industry or consumer groups concerning the potential costs or benefits of the proposed rule or proposed rule change, and shall provide a response to those comments in its final rule, including an explanation of any changes that were made in response to those comments and the reasons that the Commission did not incorporate those industry group concerns related to the potential costs or benefits in the final rule.

(4) REVIEW OF EXISTING REGULATIONS.—Not later than 1 year after the date of enactment of the SEC Regulatory Accountability Act, and every 5 years thereafter, the Commission shall review its regulations to determine whether any such regulations are outmoded, ineffective, insufficient, or excessively burdensome, and shall modify, streamline, expand, or repeal them in accordance with such review.

(5) POST-ADOPTION IMPACT ASSESSMENT.—

(A) IN GENERAL.—Whenever the Commission adopts or amends a regulation designated as a “major rule” within the meaning of section 804(2) of title 5, United States Code, it shall state, in its adopting release, the following:

(i) The purposes and intended consequences of the regulation.

(ii) Appropriate post-implementation quantitative and qualitative metrics to measure the economic impact of the regulation and to measure the extent to which the regulation has accomplished the stated purposes.

(iii) The assessment plan that will be used, consistent with the requirements of subparagraph (B) and under the supervision of the Chief Economist of the Commission, to assess whether the regulation has achieved the stated purposes.

(iv) Any unintended or negative consequences that the Commission foresees may result from the regulation.

(B) REQUIREMENTS OF ASSESSMENT PLAN AND REPORT.—

(i) REQUIREMENTS OF PLAN.—The assessment plan required under this paragraph shall consider the costs, benefits, and intended and unintended consequences of

the regulation. The plan shall specify the data to be collected, the methods for collection and analysis of the data and a date for completion of the assessment.

(ii) SUBMISSION AND PUBLICATION OF REPORT.—The Chief Economist shall submit the completed assessment report to the Commission no later than 2 years after the publication of the adopting release, unless the Commission, at the request of the Chief Economist, has published at least 90 days before such date a notice in the Federal Register extending the date and providing specific reasons why an extension is necessary. Within 7 days after submission to the Commission of the final assessment report, it shall be published in the Federal Register for notice and comment. Any material modification of the plan, as necessary to assess unforeseen aspects or consequences of the regulation, shall be promptly published in the Federal Register for notice and comment.

(iii) DATA COLLECTION NOT SUBJECT TO NOTICE AND COMMENT REQUIREMENTS.—If the Commission has published its assessment plan for notice and comment, specifying the data to be collected and method of collection, at least 30 days prior to adoption of a final regulation or amendment, such collection of data shall not be subject to the notice and comment requirements in section 3506(c) of title 44, United States Code (commonly referred to as the Paperwork Reduction Act). Any material modifications of the plan that require collection of data not previously published for notice and comment shall also be exempt from such requirements if the Commission has published notice for comment in the Federal Register of the additional data to be collected, at least 30 days prior to initiation of data collection.

(iv) FINAL ACTION.—Not later than 180 days after publication of the assessment report in the Federal Register, the Commission shall issue for notice and comment a proposal to amend or rescind the regulation, or publish a notice that the Commission has determined that no action will be taken on the regulation. Such a notice will be deemed a final agency action.

(6) COVERED REGULATIONS AND OTHER AGENCY ACTIONS.—Solely as used in this subsection, the term “regulation”—

(A) means an agency statement of general applicability and future effect that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including rules, orders of general applicability, interpretive releases, and other statements of general applicability that the agency intends to have the force and effect of law; and

(B) does not include—

(i) a regulation issued in accordance with the formal rulemaking provisions of section 556 or 557 of title 5, United States Code;

- (ii) *a regulation that is limited to agency organization, management, or personnel matters;*
- (iii) *a regulation promulgated pursuant to statutory authority that expressly prohibits compliance with this provision; and*
- (iv) *a regulation that is certified by the agency to be an emergency action, if such certification is published in the Federal Register.*

* * * * *

MINORITY VIEWS

H.R. 2308 prohibits the Securities and Exchange Commission (SEC) from proposing or adopting any rulemakings and general regulatory orders unless it makes “a reasoned determination that the benefits of the intended regulation or order justify the costs of the intended regulation or order,” while effectively weighting the analysis in favor of the market over investors. By imposing severe burdens on the SEC’s cost-benefit analysis, the legislation drastically undermines the ability of the SEC to carry out its regulatory functions, and makes it difficult to protect investors even when the SEC has identified practices that harm them. The bill also increases operating costs for the agency without increasing its budget, thereby forcing it to divert funds from other functions, such as enforcement.

The SEC is already subject to stringent economic analyses for which it is held accountable. Current law requires the SEC to conduct economic analyses as other agencies do pursuant to the Paperwork Reduction Act, the Congressional Review Act, and the Regulatory Flexibility Act. Unlike all other financial regulators, the SEC has additional statutory requirements to study how its rules affect market efficiency, competition, and capital formation. Last year, the D.C. Circuit Court of Appeals overturned an SEC rulemaking on the merits of its cost-benefit analysis, demonstrating that SEC has a sufficiently high bar when issuing rules. H.R. 2308 would set the bar impossibly high, opening up SEC’s regulatory actions to ongoing and repeated litigation.

The debate over H.R. 2308 reveals sharply different views of stricter regulation of the financial services industry. Republican Members claimed that possible costs to the industry would be burdensome; Democrats cited the tangible cost the financial crisis already has had on investors, pension funds, and American families. Democrats offered several amendments to improve the legislation, including amendments that provide adequate funding to comply with the bill’s requirements and a study of how cost-benefit analyses can inform the regulatory process. While the Majority rejected these amendments, the Republicans readily, though illogically, adopted a new requirement that requires, among other things, that the SEC report “any unintended and negative consequences that the Commission foresees.”

Because this bill represents an attempt by proxy to cut back on financial regulations, Democrats overwhelmingly oppose H.R. 2308.

BARNEY FRANK.
WM. LACY CLAY.
GWEN MOORE.
JIM HIMES.
RUBÉN HINOJOSA.
KEITH ELLISON.

ED PERLMUTTER.
MICHAEL E. CAPUANO.
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